

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
KAREN R. BAKER, JUDGE

DIVISION III

CACR06-1150

APRIL 25, 2007

DANIEL JAMUAL SMITH

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE MILLER COUNTY
CIRCUIT COURT
[CR-05-651-1]

HONORABLE JOE EDWARD GRIFFIN,
JUDGE

AFFIRMED

Appellant Daniel Jamual Smith was arrested and charged as an adult with capital murder. The murder was allegedly committed on December 6, 2005; Smith was seventeen years old at the time. He filed a motion to transfer the case to the juvenile division of circuit court. Following a hearing on the matter, the trial court denied his motion. Smith appeals that decision. On appeal, he argues that the trial court erred in denying his motion to transfer. We affirm.

Testimony at the hearing established that Tommy Ables was murdered on December 6, 2005. On that day, Smith, Charlotte Davis, Smith's three-year-old sister, and Davis's twelve-year-old brother went to the used car lot where Ables worked. This was Smith's second visit to the car lot, and Smith's intentions were to leave the car lot that day with a BMW 740. Smith and Ables took the BMW for a test drive, and the plan was for Davis to follow him when he left the car lot. Smith drove the car to a secluded area in Miller County. Davis pulled her car up directly behind the BMW.

Both Smith and Ables exited the car. At that point, Smith shot Ables in the head, and Ables fell down the nearby embankment. Smith also lost his shoe down the embankment, and he instructed the twelve-year-old to get out of Davis's car, climb down the embankment, and retrieve the shoe. Testimony showed that the twelve-year-old was reluctant to retrieve the shoe because he could see that Ables was still moving. Smith then shot Ables twice in the back as he was lying in the embankment. The twelve-year-old retrieved the shoe and got into the BMW with Smith. Smith left the scene, followed by Davis.

At the time of Ables's murder, Smith was seventeen years old and was in the tenth grade. Several family members and friends testified as to Smith's character. His mother testified that Smith helped care for his young sister and was in some ways more like a father to her. She testified that appellant was currently involved in church. She had not ever observed any violent behavior from appellant towards her or anyone else. He only had one prior arrest, which was for driving without a license. She testified that she had moved a few times, and while appellant attended several schools, he had good grades.

Eura Lee Covington, a friend of appellant's mother, testified that she had been around appellant "quite a lot" and that he was a "real nice boy . . . He was an excellent kid to be an only son." When she heard about the incident, she had trouble believing it because of the way appellant's mother raised him, and because he was such an "extra nice boy."

Lillie Ford Norwood, appellant's aunt, also testified. One of her sons was appellant's age, and the two boys grew up together and were very close. She described appellant as kind and loving. She had not ever seen him act violently towards anyone. She stated that appellant was mature, in that he helped his mother take care of his little sister. He was very obedient and was always welcome at her home.

In the court's order denying Smith's motion to transfer to juvenile court, the court found that capital murder was the most serious charge addressed by the criminal laws of the State of Arkansas and carried with it the most severe penalties under the law. The court found that the crime was committed with planning and premeditation, and with cold, calculated and aggressive behavior as indicated by the multiple gun shots. Smith showed no concern for the welfare of or the impact on the very young children that were with him at the time of the murder. The court also considered that Smith functioned well in school, made good grades, went to church regularly, and that there was no evidence presented that he was incapable of appreciating the seriousness of or the consequences of his actions. The court determined that while Smith had no prior criminal history, he acted individually, without any undue influence from others, in planning and carrying out the kidnapping and murder of Ables. The court further found that it was unlikely that Smith could be satisfactorily rehabilitated by his twenty-first birthday and that there was no evidence that would indicate any mental, physical, educational, or sound justification for transferring the case to the juvenile division of the circuit court.

Juvenile and circuit courts have concurrent jurisdiction over juveniles who, at the age of at least sixteen years, engage in conduct that if committed by an adult would constitute a felony. *Jongewaard v. State*, 71 Ark. App. 269, 29 S.W.3d 758 (2000) (citing Ark. Code Ann. § 9-27-318(c)(1) (Supp. 1999)). Concurrent jurisdiction is also given over juveniles who, at the age of fourteen or fifteen, engage in conduct that if committed by an adult would be capital murder. Ark. Code Ann. § 9-27-318(c)(2)(A) (Repl. 2002). Upon a motion by any party, the court where the charges are filed must conduct a hearing to decide if the court should retain jurisdiction or transfer jurisdiction to another court having jurisdiction. *Jongewaard v. State, supra*, (citing Ark. Code Ann.

§ 9-27-318(e) (Supp. 1999)).

When determining whether a case should be transferred to the Juvenile Division, the circuit court is compelled to consider and “make written findings on all of” the following factors: (1) The seriousness of the alleged offense and whether the protection of society requires prosecution as an extended juvenile jurisdiction offender or in the criminal division of circuit court; (2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (3) Whether the offense was against a person or property, with greater weight being given to offenses against persons, especially if personal injury resulted; (4) The culpability of the juvenile, including the level of planning and participation in the alleged offense; (5) The previous history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender and, if so, whether the offenses were against person or property, and any other previous history of antisocial behavior or patterns of physical violence; (6) The sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living, or desire to be treated as an adult; (7) Whether there are facilities or programs available to the judge of the juvenile division of circuit court that are likely to rehabilitate the juvenile prior to the expiration of the juvenile division of circuit court's jurisdiction; (8) Whether the juvenile acted alone or was part of a group in the commission of the alleged offense; (9) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and (10) Any other factors deemed relevant by the judge. Ark. Code. Ann. § 9-27-318(g) (Supp. 2005).

A circuit court does not have to give equal weight to each factor. *Landrum v. State*, 63 Ark. App. 12, 971 S.W.2d 278 (1998). A circuit court's decision to retain jurisdiction of criminal charges against a juvenile must be supported by clear and convincing evidence. Ark. Code Ann. § 9-27-318(h)(2). Clear and convincing evidence is that degree of proof that will produce in the trier of fact

a firm conviction as to the allegation sought to be established. *McClure v. State*, 328 Ark. 35, 942 S.W.2d 243 (1997). On review, we do not reverse the trial court's denial of a transfer unless the decision is clearly erroneous. *Beulah v. State*, 344 Ark. 528, 42 S.W.3d 461 (2001). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a firm conviction that a mistake has been committed. *Johnson v. State*, 356 Ark. 534, 157 S.W.3d 151 (2004).

On appeal, Smith argues that the trial court erred in denying his motion to transfer. In support of his argument, appellant asserts that he was unsophisticated, immature, and unable to understand the consequences of his actions. He further asserts that there are facilities to house juveniles, such as appellant, that are charged with violent and serious offenses, and Smith was a prime candidate for such youth facility.

Here, the court's ultimate conclusion to deny the transfer was supported by evidence of Smith's culpability for this serious crime—capital murder. *See Otis v. State*, 355 Ark. 590, 142 S.W.3d 615 (2004) (holding that the seriousness of the capital murder offense, alone, justified trying the fourteen-year-old defendant as an adult). In addition, the evidence showed that while there were others who witnessed the murder, including two very young children, Smith planned the crime and carried it out by himself. Due to the nature of the crime and the means by which it was carried out, it was unlikely that Smith would be rehabilitated by the time he was twenty-one years old. In addition, the court concluded that Smith had the ability to appreciate the seriousness of and the consequences for his actions.

There is nothing in the record to suggest that the trial court's decision to deny the appellant's motion to transfer is clearly erroneous. Accordingly, we affirm.

HART and GRIFFEN, JJ., agree.